

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER.

M/s Rathore Construction vs. The State of Rajasthan
& ors.

S.B. Civil Writ Petition No.1387/2005 under
Article 226 of the Constitution of India.

Date of Order: May 18,2005.

PRESENT
HON'BLE MR. PRAKASH TATIA,J

Mr. M.D. Purohit, Senior Advocate with Mr. Rakesh Kalla,
for the petitioner.

Mr. Rameshwar Dave, Deputy Govt. Advocate for the State.

Mr. H.S. Shrimali, for the respondents.

BY THE COURT:

REPORTABLE

Brief facts of the case are that respondent no.3 issued notice for award of royalty collection contract in village Chhoti Khatu and Badi Khatu, Tehsil Jayal and Deedwana, District Nagaur. The petitioner along with three others submitted their offer for the contract. The petitioner raised an objection against the eligibility of respondent no.5 on the ground that respondent no.5 is defaulter and has submitted a false affidavit that he is not defaulter, therefore, the petitioner's bid be

rejected without considering it as the bid is submitted by an ineligible person.

According to the learned counsel for the petitioner, condition no.2 of the tender notice (Annex.1) is very clear which says that “if the tenderer himself/in case of Firm either the Firm or its partners or in case of Company, its Director or any Member of their family and/or Company has/have any existing contract in the Department, he/it shall have to submit affidavit duly notarized stating therein there is no outstanding dues against him/it and he/it shall have to annex a No Due Certificate issued by the concerned officers, along with the application.” According to the learned counsel for the petitioner, this was the first condition for the eligibility of a tender. The important condition contained in condition no.6 is also that “if at the time of submitting the tender or at the time of opening the same by the authorities concerned or their representative, any mis-conduct is found against the tenderer, such person will be dis-qualified for a period of three years.” Therefore, according to the learned counsel for the petitioner, the bid of respondent no.5 was accepted by the respondent despite the fact that at the time of submitting the tender, he was not eligible as he was defaulter and at the time of opening of tender also, the respondent no.5 was defaulter. Since respondent no.5 submitted

affidavit stating therein that he was not defaulter, therefore, he committed mis-conduct by filing the wrong affidavit, therefore, also his bid should have been cancelled.

Respondent no. 1 to 4 submitted reply in detail and pointed out that neither respondent no.5 was defaulter nor he submitted wrong affidavit. According to the plea taken by respondents no.1 to 4, respondent no.5 already had a contract and as per the terms of the contract, he was supposed to pay his monthly installments in advance as provided under the terms of the contract. And as per the terms of the contract, the amount could have been deposited within the period of 10 days from the date of start of the month. The petitioner's installment became due for a period running from 21.2.2005 to 20.3.2005. As per the conditions of the contract, the petitioner could have deposited the installment within 10 days from 21.2.2005. Since the February month is only of 28 days and, therefore, the petitioner's time limit for depositing the installment was upto 2.3.2005, therefore, on 28.2.2005 or on 1.3.2005, respondent no.5 was not defaulter. However, respondent no.5 deposited that installment also on 2.3.2005. The same plea was taken by respondent no.5. The learned counsel for the respondents also raised objection about maintainability of the writ petition on the ground that the High Court cannot interfere in the contractual matter.

The learned counsel for the petitioner cited the judgments delivered in the cases of *Ramana Dayaram Shetty v. The International Airport Authority of India and ors.* (AIR 1979 SC 1628), *Ms. Kasturi Lal Lakshmi etc. v. The State of Jammu & Kashmir & another* (AIR 1980 SC 1992), *Kumari Shrilekha Vidyarthi etc. Etc. vs. State of U.P. and others* (AIR 1991 SC 537), *L.I.C. of India and another vs. Consumer Education and Research Centre and others* (AIR 1995 SC 1881) and *Janki Vashdeo Bhojwani and another vs. Indusind Bank Ltd. and others* (AIR 2005 SC 439) to meet with the objection of the respondents about the maintainability of the writ petition and in view of the above decisions, I do not find any substance in the objection raised by the respondents about the maintainability of the writ petition on the ground that in the contractual matter, the High Court cannot interfere.

I considered the submissions of the learned counsel for the parties and perused tender notice (Annx.-1) and conditions for the contract (Annx.-2). The conditions for the contract are the same which were applicable to respondent no.5 for his earlier contract. As per condition no.4 of the contract, reference of which can be found out from Annx-2 itself that the contractor, on grant of contract, is required to deposit the payment in installments and for that purpose, he has been given time to deposit the installment amount by 10th day of the month,

obviously the month of start of the contract. In this case, respondent no.5's contract was from 21.2.2005 to 20.3.2005, therefore, respondent no.5 had outer limit to deposit the amount by 2.3.2005. Respondent no.5 submitted the tender in time on or before 28.2.2005. On that day, the said amount was not due. The tender was said to be opened on 1.3.2005 and before that day, the amount was not due in legal sense so as to make respondent no.5 as defaulter or having any due amount in him of the respondent-department because of the reason that under the terms of the contract, time upto 2.3.2005 has been given for depositing the amount. Therefore, respondent no.5 was not defaulter nor he has submitted false affidavit. Therefore there is no merit in the writ petition and the writ petition of the petitioner deserves to be dismissed.

The learned Senior counsel Shri M.D. Purohit raised objection of seriousness about the language used by respondents no.1 to 4 in their reply which according to the learned counsel for the petitioner undermined the authority of the court. The following passage is relevant:-

“the High Court being the court of record should not indulge itself in serious disputed questions of fact as are emerging and should observe the self imposed restriction and should be very slow to interfere in such contractual matters.

Court should refrain from interfering in this matter.

It is the prerogative of the authority inviting NIT to whom to grant the contract or whose tender is to be rejected.

Even in the case of rejection of any one or any more number of the tenders, it is not required to state even the reasons for rejecting the tenders.

In this way, the prerogative of the authorities inviting NIT should not be superseded by invoking power of the appellate authority by this Hon'ble High Court by exercising the extra-ordinary writ jurisdiction.

Thus, in such type of matter, the prima thing is to be considered is the satisfaction of departmental authorities and here in this case, the authorities are fully satisfied that the highest bidder respondent No.5 if granted contract then it will not be unsafe for the department but rather than it will be far better than the contract being granted to any other person in place of respondent No.5 because the department has to watch and consider various aspects, one among them being the major aspect is that the contractor should not be trouble-some and should not create any hurdle in making payment as offered by him, should have the sound financial position and best reputation in the matter of award of contract and all these qualities at this stage are being well possessed by the respondent no.5."

The above language used by respondents virtually questioned the authority of the High Court ignoring the all proprieties. The language used reflects the only arrogance of the answering respondents. This Court presumes that it was not the intention of the respondents to undermine the court's authority or to lower down the prestige of the court or to show the arrogance of the respondents and it may be a case

of a drafting not in proper manner only but the respondents should take care while addressing the court in the form of pleading or reply.

In view of the above discussion, the writ petition of the petitioner is dismissed.

(PRAKASH TATIA),J.

mlt.